to repress and prohibit all disorderly conduct therein; and, of course, he has a right and is bound to exclude from his premises all disorderly persons, and all persons not conforming to regulations necessary and proper to secure such quiet and good order.' The foregoing language is quoted with approval in *Bass* v. *C. & N. W. R. Co.*, 36 Wis. 459, 17 Am. Rep. 495. Substantially the same language is employed by the court in *Dickson* v. *Waldron* (Ind. Sup.) 34 N. E. 510, 24 L. R. A. 483, 41 Am. St. Rep. 440. See, also, *Norcross* v. *Norcross*, 53 Me. 169; *Pinkerton* v. *Woodward*, 33 Cal. 585, 91 Am. Dec. 657; *Commonwealth* v. *Power*, 7 Metc. 601, 41 Am. Dec. 465; *Russell* v. *Fagan*, 7 Houst. 396, 8 Atl. 258; *Pullman Car Co.* v. *Lowe*, 28 Neb. 239, 44 N. W. 226, 6 L. R. A. 809, 26 Am. St. Rep. 325. The foregoing also shows that the duties of a hotel keeper to his guests are regarded as similar to the common-law obligation of a common carrier to his passengers. As regards the duty of a common carrier to his passengers, in *Dwinelle* v. *N. Y. Cen. & Hud R. R. Co.*, 120 N. Y. 122, 24 N. E. 319, 8 L. R. A. 224, 17 Am. St. Rep. 611, the court said: 'As we have seen, the defendant owed the plaintiff the duty to transport him to New York, and during its performance to care for his comfort and safety. The duty of protecting the personal safety of the passenger and promoting by every reasonable means the accomplishment of his journey is continuous, and embraces other attentions and services than the occasional service required in giving the passenger a seat or some temporary accommodation. Hence whatever is done by the carrier or its servants which interferes with or injures the health or strength or person of the traveler, or prevents the accomplishment of his journey in the most reasonable and speedy manner, is a violation of the carrier's contract, and he must be held responsible for it.' To the same effect are the following: *Pittsburg, Ft. W. & C. R. Co.* v. *Hinds*, 53 Pa. 515, 91 Am. Dec. 224; *Godard* v. *Grand T. Ry. Co.*, 57 Me. 214, 2 Am. Rep. 39; *Chamberlaine* v. *Chandler*, 3 Mason, 245, Fed. Cas. No. 2,575; *Pendleton* v. *Kinsley*, 3 Cliff. 417, Fed. Cas. No. 10,922; *Bryant* v. *Rich*, 106 Mass. 188, 8 Am. Rep. 311; *Chicago & Erie Ry. Co.* v. *Flexman*, 103 Ill. 54, 42 Am. Rep. 33; *So. Kan. Ry. Co.* v. *Rice*, 38 Kan. 398, 16 Pac. 817, 5 Am. St. Rep. 766. An examination of the foregoing cases will show, we think, that the reasoning applies with equal force to the hotel keeper, as regards his duties to his guests. Those duties spring from the implied terms of his contract, and a failure to discharge them, while it may in some instances amount to a tort, amounts in every instance to a breach of contract."

FRATERNAL BENEFIT ORGANIZATIONS—AMENDMENT OF LAWS—RESERVATION OF RIGHT TO AMEND.—The rights of a member of a fraternal benefit organization under a certificate entitling him, in case of permanent disability, to one-half the endowment named therein, "as provided in the laws of the order," are unaffected by a subsequent amendment of its laws making the disability payments one-tenth, annually, of the endowment named. This is so, notwithstanding the constitution of the organization, at the time the plaintiff joined, reserved the right to amend the laws governing the

endowment fund; the certificate containing no notice that payments would be subject to future modification. *Beach* v. *Maccabees* (Ct. App. N. Y.), 69 N. E. 281. *Citing Neill* v. *Order of United Friends*, 149 N. Y. 430; *Parish* v. *N. Y. Produce Exchange*, 169 N. Y. 34; *Weber* v. *Maccabees*, 172 N. Y. 490.

Per Cullen, J:

"The contract expressed in the certificate is absolute. It is to pay one-half of the certificate on disability 'as provided in the laws of the order,' not as may be provided in the laws of the order. A reference to the laws of the order informed the plaintiff at the time he joined the order of the character of the disability which entitled him to receive half the amount of the certificate, and there was no provision therein to the effect that the payment was not to be immediate but in annual installments. As said by Judge Gray in *Langan* v. *Supreme Council Am. Legion of Honor* (174 N. N. 266): 'It was beyond the power of the defendant to affect the obligation expressed in the certificate, without the consent of its holder.' The constitution and laws of the defendant constitute a book of over ninety pages, and the provision authorizing an amendment of the endowment laws is found, not in the endowment laws, but in a brief section in the constitution. It has been held in the case of railroad bonds that in case the bonds and trust deed contain inconsistent provisions, those contained in the bonds must prevail over those contained in the deed, for the reason that it is the provisions of the bonds that meet the eye of a purchaser and induce the purchase. (*Rothschild* v. *Rio Grande W. R'y*, 84 Hun, 103; affirmed on opinion below, 164 N. Y. 594). The same principle was applied by this court, and the case last cited approved, in *Imperial Shale Brick Co.* v. *Jewett* (169 N. Y. 143). In that case there was issued to the plaintiff a certificate insuring it 'under and subject to the conditions of Open Policy No. 4007, issued by the Buffalo Fire & Marine Underwriters, of Buffalo, N. Y.' The policy proved to be one issued by individual writers, each one obligating himself only for his aliquot share of the loss. It was held that the terms of the certificate prevailed over those of the policy, and, as the certificate represented a single indemnity for the whole loss, the liability of the underwriters was joint, despite the terms of the policy. Under the doctrine of these cases we think that the obligations assumed by the defendant in its certificate of membership should not be impaired by provisions of the constitution and laws of the order to which the attention of the member might never be called, or, at least, they should not be cut down under the reservation of the power to amend. It is quite easy for fraternal organizations, such as the defendant, if they deem the provisions for benefits to their members tentative only, and desire to have them subject to such modification as the business of the orders may require, to express that in the certificate. So, in the present case, if the certificate had provided that the payments therein specified should be subject to such modification as to amounts, terms and conditions of payment and contingencies in which the same were payable as the endowment laws of the order from time to time might provide, the amendments would be applicable to

existing members. But I think that nothing less explicit than this appearing in the certificate itself should be effectual for such a purpose. Fairness to persons joining the order required such plain dealing.

"The case of *Hutchinson* v. *Supreme Tent K. of M.* (68 Hun, 355), is not in point. There the learned court held that the plaintiff could not recover at all under the endowment laws as they existed at the time he joined the order. The claim was made to rest solely on the amended by-laws and, of course, claiming under the amended by-laws, the plaintiff was subject to the provisions of the amendment which changed the payment of the benefit from a gross sum to annual installments."

CORPORATIONS—APPOINTMENT OF RECEIVER—FEDERAL COURTS—EQUITY JURISDICTION—REVIEW ON APPEAL.—1. Under the established rule that a new equitable right created by a state statute may be enforced in a federal court, where it can be so enforced in conformity with the pleadings and practice in equity, the right given by the New Jersey statute (Revision 1896, p. 298, secs. 65, 66) to creditors or stockholders of a corporation which has become insolvent to apply to a court of chancery for an injunction and receiver may be enforced in a federal court by mortgage bondholders and stockholders of an insolvent corporation who have a lien on its property by express contract, where such court has jurisdiction by reason of diversity of citizenship and the value in dispute.

2. A court of equity has power independently of statute to appoint a receiver for an insolvent corporation at suit of its mortgage bondholders and stockholders, where the bill alleges that the insolvency was produced by the gross mismanagement of its directors, who are also charged with positive misconduct amounting to a breach of trust.

3. The appointment of a receiver for an insolvent corporation is largely within the discretion of the court, and an order making such appointment, where within the court's jurisdiction, will not be disturbed on appeal, unless it appears to have been improvidently made. *United States Shipbuilding Co.* v. *Conklin* (C. C. A.), 126 Fed. 132.

Per Acheson, Cir. J:

"By the corporation act of the state of New Jersey (Revision 1896, p. 298, secs. 65, 66), it is enacted that whenever any corporation shall become insolvent any creditor or stockholder may, by petition or bill of complaint setting forth the facts, apply to the court of chancery for a writ of injunction and the appointment of a receiver, and the court, being satisfied by affidavit or otherwise of the sufficiency of the application and of the truth of the allegations made, may issue an injunction against the corporation and its officers and agents, and may appoint a receiver for the creditors and stockholders of the company. We are not called upon to consider the question whether under this statute a creditor whose claim is not reduced to judgment, and who has no lien, can maintain a bill in equity in the Circuit Court of the United States for the appointment of a receiver of a corporation solely on the ground of the insolvency of the corporation. The complainants here are mortgage bondholders and stockholders. They have